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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,855	05/26/2006	Juan Carlos Sanchez Recio	06057	7585
23338 7590 07/06/2010 DENNISON, SCHULTZ & MACDONALD 1727 KING STREET SUITE 105 ALEXANDRIA, VA 22314				
EXAMINER				
RIPA, BRYAN D				
ART UNIT		PAPER NUMBER		
1795				
MAIL DATE		DELIVERY MODE		
07/06/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/580,855

Applicant(s)

SANCHEZ RECIO ET AL.

Examiner

BRYAN D. RIPA

Art Unit

1795

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 June 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 112, 2nd Paragraph rejections of claims 7 and 10-12.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 7-12.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/B. D. R./
Examiner, Art Unit 1795

/Harry D Wilkins, III/
Primary Examiner, Art Unit 1795

Continuation of 11, does NOT place the application in condition for allowance because: for the reasons noted in the Final Action dated March 24, 2010, the Examiner is still of the opinion that the invention as claimed would have been obvious to one of ordinary skill in the art on the basis of CAROSELLA and GLOBUS.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies, i.e., the treatment of a different waste or material than that used by the Applicant (see Remarks at page 6 second paragraph) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant further argues that CAROSELLA fails to teach a thermal sulphation step (see Remarks at page 6 third paragraph). The Examiner readily acknowledges that CAROSELLA fails to teach a thermal sulphation phase as claimed. However, the Examiner relies not on CAROSELLA but GLOBUS to teach the thermal sulphation phase of the claimed method (see Final Rejection pages 6 and 7).

In response to Applicant's arguments that CAROSELLA teaches additional treatment steps that are not used in the Applicant's process, the Examiner readily acknowledges that CAROSELLA contains additional steps not disclosed or claimed by the Applicant. However, Applicant's claims employ open claim language by the use of the word comprising (see claim 7 line 4). As a result, the Examiner is required to interpret the claims as requiring a process having at least the recited elements (see MPEP section 2111.03). If it is the Applicant's intent to limit the claim scope to only the recited elements he may do so by changing the transitional phrase so as to use closed language in accordance with MPEP section 2111.03.

As to Applicant's arguments that CAROSELLA would not employ the use of sulfur (see Remarks at page 6 fourth paragraph), the thrust of the argument appears to be that it would not be done because to do so would not prove economical. However, CAROSELLA itself teaches the addition of sulfur in certain circumstances (see col. 2 lines 45-50). Moreover, economic infeasibility does not mean that a person of ordinary skill in the art would not make the combination (see MPEP section 2145 subsection VII).

In response to Applicant's arguments regarding other differences between Applicant's disclosed invention and the prior art of record (see Remarks at page 6 fifth paragraph through page 7 third paragraph), these differences unless claimed cannot be used to differentiate the claimed invention over the prior art. The Examiner readily acknowledges differences between the disclosed invention and the prior art. However, for the reasons as stated in the Final Rejection, the Examiner is of the opinion that the claimed invention is obvious over CAROSELLA in view of GLOBUS.

Please note, the previous objections to the specification and claims are withdrawn in light of the amendments to the specification and the claims. Additionally, the 112 rejections are also withdrawn in light of the amendments to the claims.